



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 20, 2009

ITEM NUMBER: _____

SUBJECT: ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE FOR TRADER JOE'S
640 WEST 17TH STREET

DATE: OCTOBER 12, 2009

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: KIMBERLY BRANDT, AICP, ACTING DEV. SVS. DIRECTOR

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

RECOMMENDATION:

Adopt the attached resolution finding there is public convenience or necessity (PCN) for the proposed Type 42 (on-sale beer and wine - public premises) alcoholic beverage control license for wine tasting at Trader Joe's located at 640 West 17th Street.

BACKGROUND:

Existing Grocery Store

The property is located in the City's Westside, near the northwest corner of Anaheim Avenue and West 17th Street. The property is zoned C2 (General Commercial) with a General Plan land use designation of General Commercial.

Trader Joe's is a specialty grocery store with an off-sale alcoholic beverage license that has been established at this location since 1996. According to the City's Land Use Matrix, grocery store is a use permitted by right in the C2 zone.

Alcoholic Beverage License Application

On June 24, 2009, the ABC Department notified the City that Trader Joe's applied for a Type 42 license. Since the license is for ancillary wine tastings for beers and wines sold inside the store and does not change the primary grocery store use, no discretionary permit is required. City Council received this application on July 21, 2009, under written communications.

Public Convenience or Necessity Finding Requirement

ABC Department indicated that this census tract has an "undue concentration" of on-sale alcoholic beverage licenses because the ratio of the number of alcoholic beverage licenses to population within the census tract exceeds the countywide ratio.

State Law allows ABC to issue the license in the following cases:

- The City takes action, within 90 days of notification of a completed application, to make a finding that PCN would be served by the issuance.
- The City takes action, within 90 days of notification of a completed application, to forego the option to make the finding and require the applicant show that PCN would be served.
- If the City does not take action within 90 days, the applicant is then required to show that the public convenience or necessity would be served.

Although the 90-day period has lapsed since notification of the application on June 24, ABC Department requires that Council make a determination on the options listed above prior to issuance of the license in an area of "undue concentration".

ANALYSIS:

Following are justifications for City Council to make the PCN finding:

- The ancillary wine tastings introduce customers to beers and wines sold at the store. It does not alter the primary use on the property, which is a grocery store that is permitted by right at this location.
- Planning staff and the Police Department have reviewed the history of Trader Joe's and found that there were no problems associated with the sale of alcohol beverages at the establishment.

ALTERNATIVES CONSIDERED:

City Council may consider the following options:

1. Take action and make a finding of public convenience or necessity. This would allow ABC to issue the license based on the City's finding of public convenience or necessity. (Resolution, Attachment 1A)
2. Take action and forego City's option to make a finding of public convenience or necessity. This action would place the burden of proof on the applicant to show ABC that public convenience or necessity would be served before ABC could issue the license. (Resolution, Attachment 1B)
3. Take no action. This action would also place the burden of proof on the applicant to show that public convenience or necessity would be served before ABC could issue the license.

FISCAL REVIEW:


Fiscal review is not required for this item.

LEGAL REVIEW:

The City Attorney's office approved the attached resolution as to form.

CONCLUSION:

The State Department of ABC requires a determination from the City Council with regard to a finding of public convenience or necessity prior to issuance of the on-sale license for Trader Joe's. Planning staff and the Police Department have verified that there are no related code enforcement or law enforcement matters that would preclude the issuance of the ABC license.


WENDY SHIH
Associate Planner


KIMBERLY BRANDT, AICP
Acting Development Services Director

DISTRIBUTION: City Manager
Assistant City Manager
City Attorney
Public Services Director
City Clerk (2)
Staff (4)
File (2)

Andy Inthavong
Art Rodriguez & Associates
709 E. Colorado Blvd., Ste. 200
Pasadena, CA 91101

Daniel D. Hart
Department of Alcoholic Beverage Control
605 W. Santa Ana Blvd.
Bldg 28, Ste. 369
Santa Ana, CA 92701

ATTACHMENTS: 1. City Council Resolutions
2. ABC license application
3. City Council Policy No. 500-8

RESOLUTION NO. 09-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FINDING PUBLIC CONVENIENCE OR NECESSITY FOR THE PROPOSED TYPE 42 (ON-SALE BEER AND WINE - PUBLIC PREMISES) ALCOHOLIC BEVERAGE CONTROL LICENSE FOR TRADER JOE'S AT 640 WEST 17TH STREET.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the State Department of Alcoholic Beverage Control (ABC) notified the City on June 24, 2009, that Trader Joe's Company has filed an application for a type 42 (on-sale beer and wine – public premises) alcoholic beverage license at 640 West 17th Street;

WHEREAS, the City Council received this application on July 21, 2009, under written communications;

WHEREAS, the census tract that contains this property has an "undue concentration" of on-sale alcoholic beverage licenses and pursuant to California Business and Professions Code Section 23958.4(b)(2), ABC may issue the license if the City either makes a determination that a public convenience or necessity would be served or foregoes the option to make the finding, in which case the burden of proof would be upon the applicant to show ABC that a public convenience or necessity would be served;

WHEREAS, consistent with Council Policy 500-8, Planning staff and the Police Department have verified that there are no historic problems associated with alcoholic beverage service at the establishment, and there are no related code enforcement or law enforcement matters that would preclude the issuance of the ABC license.

BE IT RESOLVED that the City Council HEREBY finds public convenience or necessity for the Type 42 on-sale ABC license for Trader Joe's at 640 West 17th Street.

PASSED AND ADOPTED this 20th day of October 2009.

ALLAN MANSOOR
MAYOR, CITY OF COSTA MESA

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

RESOLUTION NO. 09-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FOREGOING THE OPTION TO MAKE A FINDING OF PUBLIC CONVENIENCE OR NECESSITY FOR THE PROPOSED TYPE 42 (ON-SALE BEER AND WINE - PUBLIC PREMISES) ALCOHOLIC BEVERAGE CONTROL LICENSE FOR TRADER JOE'S AT 640 WEST 17TH STREET.

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BE IT RESOLVED that the City Council HEREBY FOREGOES the option to make a finding of public convenience or necessity for the proposed Type 42 on-sale ABC license for Trader Joe's at 640 West 17th Street.

PASSED AND ADOPTED this 20th day of October 2009.

ALLAN MANSOOR
MAYOR, CITY OF COSTA MESA

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution No. 09- __ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 20th day of October 2009.

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this __ day of _____, 2009.

ATTACHMENT 2

Department of Alcoholic Beverage Control

State of California

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE(S)

ABC 211 (6/99)

TO: Department of Alcoholic Beverage Control
605 W. Santa Ana Blvd.
Bldg. 28, Ste. 369
Santa Ana, CA 92701
(714)558-4101

File Number: 321989
Receipt Number: 1719976
Geographical Code: 3004
Copies Mailed Date: Jun 24, 2009
Issued Date:

Received
City of Costa Mesa
Development Services Department

JUN 26 2009

DISTRICT SERVING LOCATION: SANTA ANA

First Owner: TRADER JOES COMPANY

Name of Business: TRADER JOES 35

Location of Business: 630-44 W 17TH ST.
COSTA MESA, CA 92627

County: ORANGE

Is premise inside city limits? Yes

Census Tract 0636.05

Mailing Address: PO BOX 5049
(If different from MONROVIA, CA 91017-7149
premises address)

Type of license(s): 42

Transferor's license/name: /

Dropping Partner: Yes No X

License Type	Transaction Type	Fee Type	Master	Dup	Date	Fee
42 ON-SALE BEER AND	ORIGINAL FEES	NA	Y	0	06/24/09	\$300.00
42 ON-SALE BEER AND	ANNUAL FEE	NA	Y	0	06/24/09	\$253.00
Total						\$553.00

Have you ever been convicted of a felony? No

Have you ever violated any provisions of the Alcoholic Beverage Control Act, or regulations of the Department pertaining to the Act? No

Explain any "Yes" answer to the above questions on an attachment which shall be deemed part of this application.

Applicant agrees (a) that any manager employed in an on-sale licensed premise will have all the qualifications of a licensee, and (b) that he will not violate or cause or permit to be violated any of the provisions of the Alcoholic Beverage Control Act.

STATE OF CALIFORNIA County of ORANGE

Date: June 24, 2009

Under penalty of perjury, each person whose signature appears below, certifies and says: (1) He is an applicant, or one of the applicants, or an executive officer of the applicant corporation, named in the foregoing application, duly authorized to make this application on its behalf; (2) that he has read the foregoing and knows the contents thereof and that each of the above statements therein made are true; (3) that no person other than the applicant or applicants has any direct or indirect interest in the applicant or applicant's business to be conducted under the license(s) for which this application is made; (4) that the transfer application or proposed transfer is not made to satisfy the payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the Department or to gain or establish a preference to or for any creditor or transferor or to defraud or injure any creditor of transferor; (5) that the transfer application may be withdrawn by either the applicant or the licensee with no resulting liability to the Department.

Applicant Name(s)

Applicant Signature(s)

TRADER JOES COMPANY

See 211 Signature Page

ATTACHMENT 3

CITY COUNCIL POLICY NO. 500-8

PURPOSE:

The purpose of this policy is to establish a clear and efficient process for review of applications for new liquor licenses and transfers of existing liquor licenses, and for filing of protest and accusations letters by City Council.

PROCEDURE:

Sec. 1 When notice of an application for a liquor license, or transfer thereof, is received by any officer or employee of the City of Costa Mesa, the notice shall be stamped with the date received and promptly delivered to the Director of Development Services or his or her designee.

Sec. 2 Upon receipt of the notice, the Director shall transmit a copy of the notice to the Police Chief or his or her designee with a request for information necessary to make findings provided herein. The Police Chief and Director shall prepare a report on the application and shall transmit said report to the decision-making body or person, as provided herein.

Sec. 3 Upon receipt of the notice and report by the Director and Police Chief on the application, the decision-making body or person may make findings appropriate for the type of application or take no action within its sole discretion as provided herein.

Sec. 4 The following liquor license transactions shall be processed by the Planning Division, after consultation with the Police Department; no finding of public convenience or necessity is required except for premises-to-premises transfer of a license for a business remaining in the same building but relocating to a different suite:

- Person-to-person transfer
- Stock transfer
- Drop partner(s)
- Add partners(s)
- New or premises-to-premises transfer of license for bona fide eating place that is a permitted use under the zoning code (the business is closed from 11 p.m. to 6 a.m. and does not have live entertainment)
- Premises-to-premises transfer of off-sale license for business that will remain in the same building but is relocating to a new suite.

- a. If the Planning Division and Police Department find that there has not been a history of problems related to the alcohol establishment or the applicant, the Planning Division shall forward the application to the City Clerk for inclusion in the City Council reading folder.
- b. If the Planning Division and Police Department find that there has been a history of problems related to the alcohol establishment or the applicant, the Planning Division shall forward the application to the City Clerk for inclusion on the next available City Council agenda under "New Business."

Sec. 5 Land uses involving the following liquor license transactions require approval of a conditional use permit (CUP) or minor conditional use permit (MCUP):

- New or premises-to-premises transfer of on-sale establishment (restaurant, bar, nightclub, etc.) that will be open between 11 p.m. and 6 a.m. or that proposes live entertainment.
- Change of license from bona-fide eating place to a "public premises" (bar) that is open between 11 p.m. and 2 a.m.
- New mini-market, liquor store or convenience store.
- Sale of alcoholic beverages in conjunction with the sale of gasoline.
- Premises-to-premises transfer of off-sale license, if in conjunction with an action requiring review by the Zoning Administrator or Planning Commission.

The Planning Commission or Zoning Administrator may make a finding of public convenience or necessity, as provided for in Business and Professions Code (BPC) Section 23817.7 or 23958.4(b)(2), in conjunction with action on the CUP or MCUP. The Planning Commission shall transmit notice of its decision to the City Council within five (5) days of the decision. The Zoning Administrator shall transmit notice of his or her decision to both the Planning Commission and the City Council within five (5) days of the decision. Such decision may be appealed by an interested party or called up for review by the Planning Commission or City Council within seven (7) days of the date of the notice of the decision, in accordance with procedures set forth in Costa Mesa Municipal Code Section 2-300 et seq.

Sec. 6 The following liquor license transactions shall be referred to the City Council for determination of a finding of public convenience or necessity as provided for in BPC Section 23817.7 or 23958.4(b)(2):

- New on-sale licenses for existing bars, and off-sale licenses for businesses not included in section 4 or 5 of this policy.
- Premise-to-premise transfer of off-sale licenses not included in section 4 or 5 of this policy.

Sec. 7 With regard to an application for an original liquor license or transfer of an existing liquor license not covered in Sections 4, 5 or 6 (including a person-to-person transfer), or an existing licensed premises without a pending application, City Council or the Police Chief may file a protest letter pursuant to BPC Sec. 24013 or an accusation letter pursuant to BPC Sec. 24203, where either the City Council or the Police Chief find that reasonable or probable cause exist to request the denial of the application or revocation of an existing license pursuant to BPC Sec. 24013, 24200, and 24203.

Sec. 8 Where the thirty (30) day period to file a protest letter may expire before consideration by the City Council or Police Chief of those licenses discussed under Sections 4, 5, 6 or 7, the Police Chief or his or her designee is authorized to file a letter requesting an extension with the Department of Alcohol Beverage Control pursuant to BPC Sec. 23987.

Sec. 9 Upon the City Council making a determination to file a protest or accusation letter, the City Clerk or Police Chief shall promptly transmit a letter of such protest or accusation, signed by the authorized officer, to the Department of Alcoholic Beverage Control. The letter of protest or accusation should be in a form approved by the City Attorney. Upon filing of a letter of protest or accusation, all pertinent records on such premises and notices shall be transmitted to the City Attorney for prosecution at the protest or accusation hearing.

Sec. 10 For a protest or accusation letter under Sections 7 and 8, the ground or grounds to support a denial of an application or revocation of a license include, but are not limited to the following grounds:

- a) The continuance of the license would be contrary to the public welfare or morals;
- b) A violation of the Revenue and Taxation Code and any rules of the ABC Department;
- c) A misrepresentation of material fact by the applicant in obtaining a license;
- d) A conviction of a public offense involving moral turpitude or federal law relating to alcoholic beverages;
- e) Failure to take reasonable steps to correct objectionable conditions at the licensed premises, any public sidewalk abutting the licensed premises, or immediately adjacent area that is owned, leased or rented by licensee which constitutes a public nuisance; within a reasonable time after receipt of notice to correct such conditions by either ABC Department, District Attorney, City Attorney or County Counsel:
 - 1) "Objectionable conditions" under subsection (e) includes, but is not limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passerby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise;
 - 2) "Any public sidewalk abutting a licensed premises" under subsection (e) includes the publicly owned, pedestrian traveled way, not more than 20 feet from the premises, that is located between the licensed premises and immediately adjacent area owned, leased or rented by the licensee, and a public street;
 - 3) "Reasonable steps" under subsection (e) include calling the police (timely calls to police cannot be construed as evidence of objectionable conditions) and requesting persons to leave the premises that are contributing to the objectionable conditions.

Sec. 11 Where desired, City Council may recommend conditions of approval applicable to the sales of alcoholic beverages. These conditions shall be forwarded to ABC by the City Clerk's office.